



# Elizabeth Lee MLA

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Liberal Member for Kurrajong

Leader of the Opposition

Shadow Treasurer

Shadow Minister for Climate Action, Energy and Emissions Reduction

Shadow Minister for Economic Development, Tourism and Major Projects

Shadow Minister for Housing Affordability and Choice

Mr Ian Govey AM  
Independent Reviewer, Integrity Commission Act 2018  
Chief Minister, Treasury and Economic Development Directorate  
GPO Box 158  
**CANBERRA ACT 2601**

By email: [icactreviewsecretariat@act.gov.au](mailto:icactreviewsecretariat@act.gov.au)

Dear Mr Govey,

## **REVIEW OF THE INTEGRITY COMMISSION ACT 2018 AND THE PUBLIC INTEREST DISCLOSURE ACT 2012**

On behalf of the Canberra Liberals, I provide the attached comments in relation to the review of the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*.

These are initial comments and relate only to the issue of telecommunications interception powers as contained in the Canberra Liberals' Private Members Bill.

It is likely that we will be making further comments following the release of the issues papers.

Yours faithfully,

**Elizabeth Lee MLA**  
Member for Kurrajong  
Leader of the Opposition

29 March 2023

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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Visit 196 London Circuit, Canberra ACT 2601  
Phone 02 6205 1919

Mail to GPO Box 1020, Canberra ACT 2601  
Email [lee@parliament.act.gov.au](mailto:lee@parliament.act.gov.au)

Canberra Liberals' Submission  
Review of the *Integrity Commission Act 2018* and the *Public Disclosure Act 2012*

Telecommunications powers

The ACT is one of the only Australian states or territories whose public integrity entity is not recognised under the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

Recognition under the TIA Act would enable the commission to intercept telecommunications, in accordance with the Commonwealth Act, for the investigation and exposure of corrupt conduct and improve community confidence in the ACT public sector.

Recognition under the TIA Act would enable the Commission to lawfully intercept telecommunications materials, aiding their investigative processes.

This practice would need to be subject to robust oversight mechanisms, including through the Inspector of the ACT Integrity Commission (the inspector), and several ministerial reporting requirements, including to a specified Commonwealth minister.

This is something the Integrity Commissioner has been calling for since the organisation's first annual report in 2019-20:

*In order to fully discharge its functions the Commission needs to be able to apply for warrants authorising the interception of telecommunications, access stored communications and access telecommunications data pursuant to the TIA Act. The TIA Act also governs the Commission's ability to receive information and material acquired by other agencies (such as the AFP) pursuant to that Act. Access to such information is a critical investigatory tool the Commission currently lacks. Its absence has already adversely impacted several investigations.<sup>1</sup>*

In addition, during Estimates hearings in August 2022, the Commissioner said:

*"the difficulty is that I have investigations now that I need telecommunication interception powers to conduct properly."*

In Annual Report hearings in November 2022, the Integrity Commissioner further said:

*There would have been scope for the use of certain of the telecommunication interception powers. It is less likely now that they would be useful, considering how far we have proceeded, but they would have been quite helpful earlier in the piece.*

*They would have been helpful in two ways: either cutting off lines of inquiry – "It is not worth waiting resources in that direction" – or opening up lines of inquiry or confirming suspicions otherwise raised on the material. Many investigations present those opportunities. The range of powers under the TI act is wide and I am not thinking we would exercise them all, but some of them would have been useful, I think.*

In this regard, the Canberra Liberals have developed the Integrity Commission Amendment Bill 2022 (No 2) which was presented to the Assembly on 20 October 2022.

This Bill begins the process for the ACT Integrity Commission to be recognised under the Commonwealth *Telecommunications (Interception and Access) Act 1979*.

The Bill will enable the Integrity Commission to apply for telecommunication interception warrants and conduct comprehensive investigations in response to allegations of corruption and maladministration.

The Bill would insert a new division into the *Integrity Commission Act 2018*, comprising four subdivisions. These impose obligations on the Integrity Commissioner, the Inspector of the Integrity Commission, and the Speaker, per the Commonwealth Act.

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<sup>1</sup> ACT Integrity Commission 2020-21 Annual Report, p126

Proposed new subdivision 3.5.4A.1 provides new definitions in line with the Commonwealth Act and states the object of the new division is to enable the commission to intercept telecommunications, in accordance with the Commonwealth Act, for the investigation and exposure of corrupt conduct.

Proposed new subdivision 3.5.4A.2 addresses the role of the Inspector of the Integrity Commission in relation to telecommunications interception warrant applications and imposes obligations on Integrity Commission investigators to provide specified information to the inspector when applying for warrants.

Proposed new subdivision 3.5.4A.3 describes the record keeping obligations, including information security requirements, of the Integrity Commission in relation to telecommunications interception warrants.

Proposed new subdivision 3.5.4A.4 details the obligations of the Inspector of the Integrity Commission in relation to the routine inspection of telecommunications interception warrant records and subsequent reporting requirements.

Proposed new subdivision 3.5.4A.5 obliges the Speaker to provide reports received from the inspector to the Commonwealth Minister, and also makes it an offence to unlawfully disclose information received under the new division created by this legislation.

Importantly, this Bill is about the oversight and reporting obligations of the Integrity Commission, the Inspector of the Integrity Commission and the Speaker of the Legislative Assembly. The actual interception powers themselves are granted through the Commonwealth legislation.

The TIA Act – with which the ACT Integrity Commission must comply should it be recognised as an eligible authority – contains stringent requirements for the consideration and preservation of privacy.

Part 2-5, Section 46, specifies that the Judge or AAT member issuing the warrant shall have regard to the degree to which a person's or persons' privacy would be interfered with by telecommunications interception, the gravity of the conduct under investigation, and the relevance of intercepted material to an investigation, among other criteria.

In addition, Part 5-3, Section 189, specifies that the Commonwealth Minister must take into account the privacy of users of telecommunications systems when making a determination in relation to interception capabilities. Part 4-1, Section 180F, defines the criteria that must be considered by an authorised officer prior to legally sharing intercepted material to an enforcement authority, including the effect on the privacy of a person or persons as a result of disclosure.

In addition, it's important to note that eligible authorities in other Australian jurisdictions that are recognised under the TIA Act have been operating and in compliance with the TIA Act, some for decades.

Given there are no alternatives means available to the Commission that would provide the same capability effect as telecommunications interception and the Commissioner's own comments about the need for these powers, the Canberra Liberals consider that this is a critical issue that must be considered to allow the Commission to properly investigate serious allegations of maladministration or corruption.